



PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

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OFFICE OF PETITIONS

DECISION ON PETITION

In re Application of
Giles-Komar, et al.
Application No. 10/644,308
Filed: August 20, 2003
Attorney Docket No. CEN309 USA NP
For: METHOD FOR GENERATING
ANTIBODIES

This is a decision on the petition entitled, "RECONSIDERATION PETITION TO CORRECT FILING DATE," filed April 5, 2004 (certificate of mailing date March 31, 2004). The petition will be treated as a petition under 37 CFR 1.183 to waive 37 CFR 1.10 (a).

The petition is **DISMISSED**.

Any reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

As a preliminary matter, the undersigned apologizes for missing the authorization to charge the petition fee in the petition of December 8, 2003. The \$130.00 petition fee has been charged to deposit account no. 10-0750.

Petitioners request that the Office change the accorded filing date of the above-identified application from August 20, 2003 to August 19, 2003. Petitioners state that an Express Mail package bearing Express Mail mailing label no. EU735850727US was submitted to applicants' mail room personnel for mailing on August 19, 2003, but through unforeseeable delay, the package was not deposited into Express Mail until August 20, 2003.

35 U.S.C. § 111(a)(4) states, "The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office." 35 U.S.C. § 21(a) states, "The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Director." The Director has only exercised his authority for Express Mail. 37 CFR 1.10.

Petitioners admit that the application was deposited in Express Mail with the USPS on August 20, 2003. Therefore, under the language of 37 CFR 1.10(a), this application is entitled to a filing date of August 20, 2003, the actual date of mailing shown by petitioners' Express Mail receipt.

The facts of this case do not establish the existence of extraordinary circumstances, where justice requires the waiver or suspension of the language set forth in 37 CFR 1.10(a) under 37 CFR 1.183.

Petitioners have not submitted any statement from the USPS acknowledging that an error was made in the handling of petitioners' Express Mail package. Instead, petitioners admit the package was deposited with the USPS as Express Mail on August 20, 2003.

Even if the Office were to accept the argument that employee error is an extraordinary situation, the petition also lacks a showing that justice requires waiver of the rule. The evidence presented indicates that petitioners were aware that the application had to be filed no later than August 19, 2003, in order to obtain the benefits available under 35 U.S.C. 119 based on petitioners' prior provisional application. Yet, petitioners waited until the last day provided in the statute for claiming benefits under 35 U.S.C. 119 to complete the application in final form for filing. Those who file at the end of a statutory bar year (35 U.S.C. 102(b)) or a priority year (35 U.S.C. 119) or who delay filing a continuing application until the last possible day for establishing continuity (35 U.S.C. 120 or 121), do not leave any opportunity to overcome any error which might occur in filing the application. The Office, where it has the power to do so, should not relax the requirements of established practice in order to save an applicant from the consequences of his delay. *See Ex parte Sassin*, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906) and *compare Ziegler v. Baxter v. Natta*, 159 U.S.P.Q. 378, 379 (Comm'r Pat. 1968) and *Williams v. The Five Platters, Inc.*, 510 F.2d 963, 184 U.S.P.Q. 744 (C.C.P.A. 1975).

The application is entitled to a filing date as of the date of deposit in Express Mail, or August 20, 2003.

After the mailing of this decision, the application will be forwarded to Technology Center 1600 for examination in due course.

Further correspondence with respect to this matter should be addressed as follows:

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Crystal Plaza 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202

By FAX: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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